92-1809

No. _____

Supreme Court, U.S.
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In The
Supreme Court of the United States
October Term, 1992

RICHARD R. SYRE
Petitioner,

vs.

ILLINOIS
Respondent.

On Petition For A Writ Of Certiorari
To The Illinois Supreme Court

PETITION FOR WRIT OF CERTIORARI

Richard R. Syre, J.D.
Box 1505
Woodruff, Wisconsin 54568
(715) 588-3064

QUESTION PRESENTED FOR REVIEW

Does an appellate court judgment setting aside a conviction on grounds that the prosecutor's evidence is insufficient to sustain a conviction bar government appeal under the Double Jeopardy Clause?

PARTIES TO THE PROCEEDINGS

PETITIONER: Richard R. Syre, J.D.
Box 1505
Woodruff, WI 54568
(715) 588 3064

RESPONDENT: Richard A. Baylaender
Illinois Attorney
Registration and
Discipline Commission
203 North Wabash Ave.
Chicago, IL 60601

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STATE COURT RULING SUBJECT TO REVIEW

Appeal is taken from Judgment of the Illinois Supreme Court entered May 29, 1991, dismissing Petitioner's challenge to jurisdiction (A 1) which became final on January 27, 1993. (A 2)

JURISDICTIONAL STATEMENT

Jurisdiction of the United States Supreme Court is invoked pursuant to 28 U.S.C. 1257 (3).

VERBATIM CONSTITUTIONAL PROVISION

Fifth Amendment to the United States Constitution: ". . . nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb. . "

STATEMENT OF THE CASE

This appeal concerns the legality of reciprocal discipline in Illinois based upon a conviction in Pennsylvania after the Pennsylvania Superior Court acquitted your Petitioner.

In 1981 a jury convicted your Petitioner, Richard Syre, a practicing attorney, of witness tampering. The government had sent the witness to Mr. Syre on the pretense of settling a dispute and falsely characterized the transaction as witness tampering with the following consequences.

On appeal the Pennsylvania Superior Court acquitted, finding the evidence insufficient to sustain the conviction. Commonwealth v. Syre, 469 A.2 1059 (Pa. Super. 1983) On government appeal the Pennsylvania Supreme Court reversed and remanded. Commonwealth v. Syre, 489 A.2d 1340 (Pa. 1985) The Pennsylvania Superior Court reversed the conviction a second time finding official jury interference. Commonwealth v. Syre, 501 A.2d 671 (Pa. Super. 1985) On government appeal the Pennsylvania Supreme Court reinstated the sentence a second time but without remanding, leaving many claims of trial error unresolved. Commonwealth v. Syre, 518 A.2d 2535 (Pa. 1986) cert. denied, 107 S.Ct. 1577 (1987) Ignoring its own acquittal by which it had previously excused itself from reviewing trial error the Pennsylvania Superior Court dismissed your Petitioner's challenge to the sentence.

Commonwealth v. Syre, 576 A.2d 1139 (Pa. Super. 1990) cert. denied, 113 L.Ed. 2d 241 (1991)

During the course of these proceedings the United States Supreme Court on challenge by the Pennsylvania Supreme Court reaffirmed its prior holdings that double jeopardy barred the government from appealing an evidentiary insufficiency decision because that decision is an acquittal. Smalis v. Pennsylvania, 476 U.S. 2104 (1986) Nevertheless, courts refused to respect the bar on government appeal of Mr. Syre's acquittal. Instead they allowed the conviction, twice reinstated on government appeal to the Pennsylvania Supreme Court, to bar Mr. Syre from pleading and proving his innocence in these and other proceedings. Syre v. Pennsylvania, 662 F. Supp. 550 (E.D.Pa., 1987), affirmed, 845 F.2d 1015 (3rd Cir. 1988), cert. denied, 102 L.Ed. 112 (1988) State

of Wisconsin, Ex rel. Syre v. Williquette, Vilas County Sheriff, 441 N.W. 2d 756 (Wis. App. III, 1989), cert denied 493 U.S. 854 (1990)

Lower court judgments offered your Petitioner favorable treatment of no imprisonment, no extradition, and no disbarment. When this extortion failed to induce your Petitioner to relinquish his double jeopardy claims courts imprisoned, extradited, and disbarred your Petitioner after reversing the favorable lower court rulings.

Your Petitioner seeks a writ of certiorari because the Double Jeopardy Clause bars government appeal of all convictions, acquittals, and pardons in order to protect the delegation of power to enter those judgments.

SUMMARY OF ARGUMENT

The constitutional provisions that prevent the criminal process from being

used to oppress cannot protect both the accused and the accusor in the same proceeding. Therefore, the accused is acquitted on a finding of reasonable doubt even if he proves his innocence.

HISTORICAL BACKGROUND

Prior to 1978 a court that found evidence insufficient to sustain a conviction could order a retrial or an acquittal. In Burks v. United States, 437 U.S. 1 (1978), the Supreme Court held that such a finding is an acquittal under the Double Jeopardy Clause which bars retrial. The Court failed to note that double jeopardy bars government appeal of all convictions, all acquittals, and all pardons. Lower courts influenced by pre-1978 opinions often held that court ordered acquittals, as distinguished from jury acquittals, decide a question of law which the government may appeal.

In 1986 the United States Supreme Court ruled in Smalis v. Pennsylvania, 476 U.S. 104 (1986), that double jeopardy barred government appeal of a defendant's successful motion for acquittal because the ruling resolved a question of fact, not law, in favor of the defendant. In response the Pennsylvania Superior Court in Commonwealth v. Fitzhugh, 520 A.2d 424 (Pa. Super. 1987), contradicted Smalis holding that double jeopardy only bars retrial, not government appeal itself, which it held is permissible when a jury conviction can be reinstated.

In 1991 the United States Supreme Court silently affirmed Fitzhugh when it denied this Petitioner's Petition for Certiorari to the Pennsylvania Superior Court directly challenging Fitzhugh.

The double jeopardy bar on government appeal of acquittals, convictions, and pardons is a Constitutional provision

based on the more general, ancient understanding that government appeal in criminal cases is not to be favored.

In ancient practice the criminal defendant had no rights, not even the right to present evidence. Under that regime the only judgment in favor of the criminal defendant was the acquittal. The rule protecting the finality of the acquittal protected the power of the court to acquit.

In modern practice government appeal in criminal cases is objectionable because it is a means of evading the constitutionally protected rights of criminal defendants. The court may grant and the government then appeal rulings in favor of the criminal defendant that have little merit as a way of avoiding the defendant's substantial claims of oppression which the court would prefer, for good or bad reasons, not to review.

Under any conception of criminal practice the responsibility for enforcing criminal law is a public, not private, matter. Consequently, the accusor is represented by the state. The accused is properly an opponent of the established legal rule, not its advocate as he is made to be on government appeal.

Strict limits on government appeal in criminal cases must be observed if compromise of the judicial process is to be avoided. In 1970 Congress repealed laws putting limits on government appeal in criminal cases. Searching itself for the double jeopardy limits on government appeal in criminal cases the court ended up compromising the judicial process.

CONSTITUTIONAL AND LEGISLATIVE DELEGATION OF POWER

Delegation of power to decide cases is impossible unless final judgments are recognized and protected by law. A judg-

ment is not final if it can be appealed. Therefore, the law bars the government from appealing final judgments -- convictions, acquittals, and pardons -- to protect the delegation of power to enter those judgments.

This ancient rule, the essence of double jeopardy, is not concerned with who wins or loses or what method is used to determine guilt or innocence. Whether the trial process is irrational (trial by ordeal) or rational (requiring an estimate of truth) the government may not appeal the verdict without destroying the delegation of power to enter the verdict.

In a rational system of criminal justice the power to acquit is the power to find reasonable doubt. This power is delegated by the Constitution and statutes creating the courts. The power is exercised when a court grants the defendant's motion for acquittal.

VERDICT NULLIFICATION

The court's power to acquit is limited to discharging the criminal defendant on a finding that evidence is insufficient to sustain a conviction beyond reasonable doubt. Bill of Rights provisions that prevent the criminal process from being used to oppress cannot protect both the accused and accusor in the same proceeding. Therefore, a judgment finding the truth of alleged facts can only be entered against the accused, never against the accusor in the same proceeding.

The bar on government appeal of the finding of reasonable doubt protects the personal integrity of judges as well as the integrity of the process.

There are logical limits to the court's discretion to review. When the standard of proof is rigorous -- as proof beyond reasonable doubt in criminal cases -- a verdict finding the evidence unper-

suasive is the solitary and sufficient basis for termination of the process. The demand for a more persuasive ground for dismissal contradicts the rigorous standard of proof.

If government appeal of acquittals is allowed a court may reverse a just acquittal. When the government dishonestly secures a false conviction government appeal is a deliberate attempt to render evidence of false prosecution and government misconduct inactionable by delay or verdict nullification. Successful government appeal produces a sham judgment which stains all judges who attempt to enforce it while their conduct remains extrajudicial and culpable.

The limits on the court's discretion to review are often ambiguous. But whenever such review touches matters of pardon conviction, and acquittal review crosses

into the area where the delegation of power is, and must remain, certain.

The absolute bar on all government appeals in criminal cases gave way to statutory limits the scope of which the Court, in candid agony, failed to define. The Court's opinions frequently confused civil procedures for directing verdicts with criminal procedures for directing verdicts which are not comparable because of the rigorous standard of proof required in the criminal case to protect the Bill of Rights.

When a criminal defendant moves for acquittal he admits the truth of the testimony against him and denies that there is enough evidence to prove the charges beyond reasonable doubt. The directed verdict, before or after conviction, finds reasonable doubt for lack of evidence but never establishes a factual claim of the criminal defendant.

In civil proceedings either party may affirm an opponent's factual claims and obtain summary judgment, a directed verdict, or reversal on appeal on those undisputed facts. When a claim cannot be resolved on an opponent's statement of fact then the failure of either party to establish disputed factual claims with a preponderance of evidence necessarily establishes the opposing party's factual claims regardless of the actual quantity of evidence. An appellate court may reverse a civil verdict when it finds clear error in the factual decision.

As to fact and law civil verdicts are reversible on appeal of either party be cause both parties plead and prove their claims by a preponderance of evidence. Convictions and acquittals are not reversible verdicts in either fact or law <u>on government appeal</u> because the defendant does not <u>plead and prove</u> his claims. The

criminal defendant's claims -- his affirmative defenses -- come in as evidence to show there is not proof beyond a reasonable doubt of guilt.

Government appeal of a conviction is self-evidently a sham proceeding. The sham nature of government appeal of a court ordered acquittal is hidden in the limitations placed on the definition of acquittal to protect the integrity of the judicial process. When the court ordered acquittal is nullified on government appeal the conviction is also nullified. The law requires a consensus on proof which does not exist when appellate courts disagree on proof.

If double jeopardy bars retrial after court ordered acquittal that consensus on proof can never again be obtained. Double jeopardy bars retrial only on the identical charges in the same jurisdiction. It does not bar relitigation of

guilt or innocence in other proceedings. The conviction, representing a consensus sustained against all challenges the law allows a criminal defendant, does bar relitigation of guilt or innocence.

This balance between verdicts is essential to the integrity of the entire judicial process. It has been destroyed by recent rulings misstating United States Supreme Court double jeopardy opinions. The opinion stated in Commonwealth v. Fitzhugh and a growing number of other post-Smalis cases that double jeopardy bars retrial but not government appeal of an intermediate appellate court ordered acquittal requires immediate correction.

APPEAL OF FAILURE OF PROOF ON A HIGH STANDARD OF PROOF

An honest and competent judge applying a high standard of proof satisfies all that justice demands for a fair trial. The Constitution guarantees a jury as well

as other rights in recognition that honesty and competence must be an unfailing reality in criminal prosecutions.

If criminal rights are to be enforced by courts then appellate courts must decide disputed facts of official misconduct alleged by criminal defendants. The court enforces rights by opinions not by judgments punishing culpable conduct. Consequently, a defendant's allegations of judicial misconduct are established when the court as a presumptively honest and competent judicial authority decides that the government has not proven beyond a reasonable doubt that there is an absence of prejudice to the defendant.

This judgment is an opinion, not a verdict, but being a finding of reasonable doubt government appeal should never be favored. The Court's failure to understand limits on government appeal in crim-

inal cases has already proven to be costly to society.

In this case your Petitioner alleged official jury interference and established that claim in the Pennsylvania Superior Court. (501 A.2d 671) The prosecutor's appeal of the Superior Court's order for a new trial upon the court's observation of "overwhelming" evidence of jury interference created more evidence of judicial misconduct and further compromised the judicial process.

In Smalis v. Pennsylvania the Pennsylvania Supreme Court, asserting power to review court ordered acquittals, misstated the truth of fundamental principles that prevent the corruption of the judicial process in order to conceal its own corruption of the judicial process in Commonwealth v. Syre. The United States Supreme Court cannot continue to indulge this misstatement of law expressed in Fitzhugh

and other rulings without further compromise of the judicial process.

CONCLUSION

The Illinois Supreme Court acted beyond its jurisdiction in permitting reciprocal discipline proceedings in Illinois based upon your Petitioner's conviction which the Pennsylvania Superior Court reversed when it found the evidence insufficient to sustain the conviction beyond a reasonable doubt. Your Petitioner respectfully requests that the United States Supreme Court declare these reciprocal disciplinary proceedings in Illinois to be a legal nullity and rule in clear, unambiguous language that double jeopardy bars government appeal of all acquittals including acquittals entered by "intermediate" appellate courts.

Respectfully submitted,

Richard R. Syre, J.D.